



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Earl Ray Tomblin
Governor

June 2012

Michael D. Riley
Insurance Commissioner

WEST VIRGINIA INFORMATIONAL LETTER

NO. 182

To: All Insurance Companies and Producers Licensed to Sell Long-Term Care Insurance in West Virginia

Re: Guidance on the Implementation of the West Virginia Long-Term Care Partnership Program

The purpose of this bulletin is to provide guidance regarding the role of the West Virginia Offices of the Insurance Commissioner (“OIC”) in the implementation of the West Virginia Long-Term Care Insurance Partnership Program (“LTCIP Program”).

BACKGROUND: Federal enabling legislation pertaining to the Long-Term Care Insurance Partnership Program is set forth in the Deficit Reduction Act of 2005, Pub. L. 109-171 (“DRA”). The Centers for Medicare and Medicaid Services (CMS) issued a guidance on the program in 2006.¹ On October 25, 2010, the West Virginia Bureau for Medical Services (“BMS”) obtained CMS approval of a Medicaid State Plan Amendment (“SPA”) establishing the LTCIP Program in this state effective July 1, 2010. Under the LTCIP Program, individuals who purchase qualified long-term care insurance policies² that meet certain requirements specified by the DRA (“Partnership Policies”) can apply for Medicaid under special rules for determining financial eligibility and estate recoveries. The SPA provides that “[w]here appropriate,” BMS will rely on “attestations” of the Insurance Commissioner with regard to matters within his expertise. This letter describes the primary areas of the OIC’s involvement in the BMS-administered program.

CONSUMER PROTECTION. The consumer protection requirements necessary for certification as a qualified Partnership Policy, as set forth in section 1917(b)(5)(A) of the Social Security Act,³ principally include certain provisions of the National Association of Insurance Commissioners’ (“NAIC”) Long-Term Care Model Regulation and Model Act; the relevant provisions are contained within a legislative rule entitled “Long-Term Care Insurance,” W. Va. Code St. R. §114-32. Any carrier requesting approval of a long-term care insurance policy as a qualified Partnership Policy must certify in writing to the OIC that the policy meets all of the required consumer protection standards (the required certification form can be found on the OIC’s website). Any long-term care insurance policy (including a certificate issued under a group policy) previously approved by the OIC can also be certified as meeting the consumer protection standards by use of this certification form. If a carrier intends to use new policy or certificate forms that have not been previously approved by the OIC for sale as a Partnership Policy, the certification form should be included when submitting the new policy or certificate as part of the OIC’s standard form filing and approval process. Once the required certification is submitted to the OIC, the carrier may market the policy as a Partnership Policy provided the policy also meets the inflation protection standards described in the next section.

¹ See State Medicaid Directors Letter #06-019 (July 27, 2006).

² A qualified LTC policy is one that meets the requirements of I.R.C. §7702B.

³ 42 U.S.C. §1396p(b)(5)(A).



INFLATION PROTECTION.⁴ In addition to the *offers* of inflation protection mandated by W. Va. Code of St. R. §114-32-11 with respect to all long-term care policies offered for sale in West Virginia, a policy must also include the following in order to be deemed a Partnership Policy.

- If the policy is sold⁵ to an individual who has not attained age 61 as of the date of purchase, the policy *must* provide compound annual inflation protection;
- If the policy is sold to an individual who has attained age 61 but has not attained age 76 as of the date of purchase, the policy *must* provide some level of inflation protection.
- If the policy is sold to an individual who has attained age 76 as of the date of purchase, the policy *may* (but is not required to) provide some level of inflation.

Any carrier requesting approval of a long-term care insurance policy as a Partnership Policy must certify in writing to the OIC that the policy meets the required inflation protection standard; such certification must be made on the OIC form certifying compliance with the consumer protections.

DISCLOSURE REQUIREMENT: Any Partnership Policy issued or delivered for issue in West Virginia must be accompanied by the 'Notice of Long Term Care Partnership Status' (located on the OIC's website) explaining the benefits associated with a Partnership Policy and indicating that at the time of issuance the policy is a Partnership Policy; in lieu of the notice set forth on the website, a similar notice may be used if filed and approved by the Commissioner. In the case of a group insurance contract, such notice shall be provided to the insured under a certificate upon the issuance of the certificate. In determining whether to provide this notice with respect to a policy, the carrier may rely upon a statement by the policyholder, certificate holder or insured that the insured is a resident of West Virginia.

REPORTING REQUIREMENTS. Issuers of Partnership Policies must provide reports to the Secretary of the United States Department of Health and Human Services in accordance with 45 C.F.R. Part 144, Subpart B (2008).


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⁴ See 42 U.S.C. §1396p(b)(1)(C)(iii)(IV).

⁵ For purposes of applying this inflation protection requirement, a policy is deemed to have been "sold" on the effective date of coverage under the policy, e.g. the date of purchase of a certificate issued under a group insurance contract means the effective date of coverage under such certificate. If the insured and the policyholder or certificate holder are different, the insured should be considered the individual to whom a policy is sold for purposes of applying the inflation protection requirements. A qualifying policy or certificate received in an exchange on or after July 1, 2010, will be treated as newly issued and thus eligible for Partnership Policy status. The addition of a rider or endorsement or a change in a schedule page for the purpose of meeting the Long-Term Care Partnership requirements in West Virginia may be treated as giving rise to an upgrade to Partnership status if the effective date of the policy revision is on or after July 1, 2010.